Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Cellular South Licensees, Inc.	)	
	)	
Petition for Designation as an	)	
Eligible Telecommunications Carrier	)	
Throughout its Licensed Service Area	)	
In the State of Alabama	)	

OPPOSITION TO APPLICATION FOR REVIEW

CELLULAR SOUTH LICENSES, INC.

By: David A. LaFuria
Steven M. Chernoff
Its Attorneys

Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 857-3500

January 14, 2003

TABLE OF CONTENTS

Summary

The Wirelinc Competition Bureau ("WCB") properly found that a grant of eligible telecommunications carrier ("ETC") status to Cellular South Liccnses, Inc. ("Cellular South") throughout its service area in Alabama is in the public interest. The decision properly implements thc Congressional mandatc to open all local markets to competition, and it will preserve and advancc universal scrvice by providing rural consumers with competitive choices that will begin *to* approach those available in urban arcas. The decision is fully consistent with numerous prior WCB orders that presented substantially identical facts, applying the same analytical framework and reaching the same result.

The Alabama Rural Local Exchange Carriers ("ARLECs") fail to provide a single legitimate reason to disturb the WCB's well-grounded dccisiori. The ARLECs completely ignore the pro-competitive objectives of the 1996 Telecommunications Act by urging a "public interest" analysis that exclusively considers the interests of incuinbcnt ETCs. The ARLECs also fail to provide any evidence that consumers will be harmed in any way. Additionally, the ARLECs inappropriately ask thc Commission to suspend application of existing law based on the vague notion that some of its rules may one day be changed. Finally, they express concern about "excessive" growth of the high-cost fund and attribute it to competitive ETCs, even though growth in thc fund has rcsulted primarily from large increases in support to incumbent local exchange carriers such as thc ARLEC member companies.

For all the above reasons, the Application for Rcvicw should be denied.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
	)	
Cellular South Licenses, Inc	)	
	)	
Petition for Designation as an	)	
Eligible Telecommunications Carrier	)	
Throughout its Licensed Service Area	)	
In the State of Alabama	)	

OPPOSITION TO APPLICATION FOR REVIEW

Cellular South Licenses, Inc. ("Cellular South"), by counsel and pursuant to Section 1.115 of the Commission's rules, hereby submits its Opposition to the Application for Review ("Application") filed by the Alabama Rural Local Exchange Carriers ("ARLECs") in the captioned proceeding on December 30, 2002, challenging the Wireline Competition Bureau's ("WCB") *Memorandum Opinion and Order*, DA 02-3317 (released December 4, 2002) ("*MO&O*").

The WCB correctly followed Congress' pro-competitive mandate, as expressed in the Telecommunications Act of 1996 ("1996 Act"), and consistently applied the FCC's rules and precedent flowing therefrom in reaching its conclusion that Cellular South is qualified to be an ETC and that a grant of its petition will serve the public interest. Cellular South's entry as a competitor will preserve and advance universal service by ensuring that rural consumers are able to choose from an array of services and price plans that begin to measure up to the choices available in urban areas.[1] The ARLECs have failed to provide any evidence that consumers in

[1] *See* 47 U.S.C. § 254(b)(3).

Alabama will be harmed by a grant of Cellular South's petition. Issues now raised by the ARLECs implicate broader policy questions best left for the Commission's ongoing referral to the Federal-State Joint Board on Universal Service ("Joint Board").[2] The Commission should reject the ARLECs' anticompetitive request to suspend enforcement of settled rules and policies simply because of ongoing regulatory review.

For the reasons set forth below, the ARLECs' Application must be denied.

I. THE WCB'S PUBLIC INTEREST ANALYSIS WAS CONSISTENT WITH THE ACT AND COMMISSION PRECEDENT

A. The WCB's Public Interest Analysis Properly Took the 1996 Act's Pro-Competitive Purposes into Account

In its determination that a grant of Cellular South's petition would serve the public interest, the WCB properly focused on *whether consumers would benefit* from the introduction of competition in the designated areas. Congress provided a clear answer to this question in the 1996 Act by setting forth a comprehensive law to encourage competition in the nation's local exchange marketplace.

The ARLECs' claim that universal service is "a venture fund to create 'competition' in high-cost areas"[3] distorts how federal policy evolved. In fact, universal service began in a monopoly environment as a system of implicit subsidies that kept long distance, business, and urban rates artificially high and perpetuated inefficient ILEC rate structures.[4] Congress changed

[2] *See Federal-State Joint Board on Universal Service, Order*, FCC 02-307 (rel. Nov. 8, 2002) ("*Referral Order*").

[3] Application at p. 5.

[4] ROBERT W. CRANDALL AND LEONARD WAVERMAN, WHO PAYS FOR UNIVERSAL SERVICE? 7-8 (2000).

all of this with tlie adoption of the 1996 Act, declaring its intent to open "all telecommunications markets" to competition.[5]

This slattitory focus was reflected in the new provisions on universal service, which provided, for the first time, that multiple carriers could receive universal service subsidies in the same market, including rural markets.[6] Congress recognized that under a system of implicit subsidies, available only to rural ILECs, there will never be facilities-based competition in most, if not all, of rural America. Only if implicit subsidies are made explicit and portable to conipcting carriers can consumers in rural arcas begin to enjoy the choices that are available to consumers in urban areas.[7] The WCB propcrly followed Congress' lead in finding that the public will he well served by Cellular South's designation.

In an attempt to deflect attention from the clearly pro-compclitivc purposes of the 1996 Act, the AKLECs mischaracterize the holding of the US. Court of Appeals for the District of Columbia Circuit in *U.S. Telecom Association v. FCC*.[8] In that case, when the D.C. Circuit expressed doubt that the 1996 Act's purposes would be fulfilled by "completely synthetic competition," the Court was rcfcrring io its concern that the Commission's unbundling rules

---

[5] *See* Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113.

[6] *See* 47 U.S.C. § 214(e)(2).

[7] 47 U.S.C. § 254(b)(3) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and are available at rates that are reasonably comparable to rates charged for similar services in urban areas"). *See also Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8786 (1997) ("*First Report and Order*") ("The amount of support will be explicitly calculable and identifiable by competing carriers, and will be portable among competing carriers, i.e., distributed to the eligible telecommunications carrier chosen by the customer").

[8] *See* Application at p. 17.

were not furthering the Congressional objective of promoting *facilities-based competition*.[9] Far from cautioning against competition, the Court's complaint was that the FCC was not doing enough to promote it. Cellular South has committed to provide facilities-hased competition throughout its designated ETC service area without reliance on ILEC unbundled network elements.[10] Thus, the D.C. Circuit's holding only reaffirms the 1996 Act's goal of introducing the kind of competition Cellular South will bring to rural Alabama

The ARLECs also improperly rely on Justice Brryer's separate opinion concurring in part and dissenting in part in *Verizon v. FCC*, which clearly does not reflect the views of the seven justices who conipriseti the majority.[11] Indeed, the majority opinion niade clear the pro-competitive objectives of the 1996 Act:

> For the first time. Congress passed a ratesetting statute with the aim not just to balance interests between sellers and buyers, but to reorganize markets by rendering regulated monopolies vulnerable to interlopers, even if that meant swallowing the traditional federal reluctance to intrude into local telephone niarkcts."

Moreover, the majority directly addressed and rejected Justice Rreyer's arguments."[12] Thus, *Verizon* reaffirms the 1996 Act's purpose of promoting local competition and is concerned only with the issue *of* whether the C'onimission's rules go far enough to further those pro-competitive objectives

---

9 *U.S. Telecom Ass'n v. FCC*, 290 F.3d 415, 424 (D.C. Cir. 2002).

10 *See* Perition at p. 8.

11 *See* Application at pp. 17-18.

12 *Verizon Communications, Inc. v. FCC*, 122 S.Ct. 1646, 1661 (2002)

13 *See id.* at 1676 .

B. The WCB's Analysis is Supported by Commission Precedent

The Commission has consistently acted in furtherance of the 1996 Act's pro-competitive mandate in several orders designating wireless carriers as ETCs in rural areas, and the *MO&O* steadfastly follows this course. The ARLECs wrongly claim that the *MO&O* "prematurely sets a precedent".[14] On Ihc contrary, ample Commission precedent is in place. Thc WCB's action followed the same framework and reached the same result as it did in multiple previous decisions that presenred substan tially identical facts

In considering the public interest, the WCB has focused on competitive benefits, specifically considering (1) whether consumers will benefit from competition, and (2) whether consumers would be harmed by the designation of an additional ETC.[15] Applying this analysis in the competitive context provided by the 1996 Act, designation of wireless ETCs in rural areas has been consistently found to be in the public interest

For example, in granting Westcrii Wirelcss Corporation ETC status in Wyoming, the WCB concltided:

> We reject the general argument that rural areas are not capable of sustaining competition for universal service support. We do not believe that it is self-evident that rural telephone companies cannot survivc competition from wireless providers. Specifically, we find no inerit to tlic contention that designation of an additional ETC in areas scrved by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raisc rates, or redticc scrvice quality to consumers in rural areas. To the contrary, wc believe that competition may provide incentives to the

---

[14] Application at p. 1.

[15] *See, e.g., Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, 55 (2000) ("*Western Wireless*"); *Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, 16 FCC Rcd 18133, 18137-39 (2001) ("*Pine Ridge*"); *Guam Cellular and Paging, Inc. d/b/a Guamcell Communications*, CC Docket No. 96-45, DA 02-174 (C.C.B. rel. Jan. 25, 2002) at ¶¶ 15-16 ("*Guamcell*").

> incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.[16]

Turning to the specific petition before it, the WCB concluded that the competition that would result from the designation of an additional ETC would benefit consumers in the designated area. Specifically, the WCB concluded that consumers would benefit from the "increased customer choice, innovative services, and new technologies" and that incumbents would have an incentive to improve service in order to remain competitive, all to the benefit of rural consumers.[17] The WCB also concluded that the designation would not hat-in rural consumers, since the applicant had demonstrated sufficient commitment and ability to serve customers in the event an incumbent LEC relinquished its ETC status.[18] The WCB's analysis was upheld by the full Commission on reconsideration.[19]

In the *Pine Ridge* order, the WCB clarified that those objecting to the designation bear the burden of "present[ing] . . . evidence that designation of an additional ETC in areas served by rural telephone coinpanics will reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas."[20]

More recently, in its January 2002 *Guamcell* decision, the WCB applied the same analysis used in *Western Wireless* and *Pine Ridge*, concluding that "the island of Guam will benefit from competition in the provision of telecommunications service" and that:

---

16 *Western Wireless*, *supra*, 16 FCC Rcd at 57 (2000) ("*Western Wireless*").

17 *See id.* at 55.

18 *See id.* at 55-56.

19 *See Petitions for Reconsideration of Western Wireless Corporation's Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, FCC 01-311 (rel. Oct. 19, 2001) ("*Western Wireless Recon. Order*").

20 *Pine Ridge*, *supra*, 16 FCC Rcd at 18138.

> . . . competition in Guam should resiilt riot only in increased choices, higher quality scrvicc. and lower rates, but will also provide an incentive to tlic incumbent rural telephonc company to introduce new and innovative serviccs, including advanced service offerings, to remain competitive, resulting in improved service to Guam consumers.[21]

Proceeding to tlic next stcp in its analysis, tlic WCB then concluded that consumers would not bc harmed, by Guamcell's designation, emphasizing that tlic applicant's use of its own facilities would enable it to serve customers otherwisc lefi without service in case an ILEC relinquished its ETC status.[22]

In the instant proceeding, the WCB followed *Western Wireless*. *Pine Ridge*, and *Guamcell* in concluding that:

> [c]ompetition will allow customers in rural Alabama to choose service based on pricing, service quality. customer service, and service availability. In addition, we find that the provision of competitive service will facilitatc universal service to tlic benefit of consumers in Alabama by crcating incentives to cnsure that quality services are available at "just, reasonablc, and affordable rates."[23]

Consistent with its prior decisions, the WCB concluded that:

> tlierc is no reason to believe that consumers in tlic affected rural areas will not continuc to bc adequately served should tlie incumbent carrier seek to relinquish its ETC designation . . . tlie parties opposing this designation have not presented persuasive cvidcnce to support their contcntion that designation of an additional ETC in the rural arcas at issuc will reduce investment in infrastructure, raisc rates, reduce service quality to consumers in rural arcas or result in loss of network efficiency.[24]

---

21 *Guamcell, supra,* at ¶ 15.

22 *See id.* at ¶ 17.

23 *MO&O* at ¶ 25.

24 *Id.* at ¶¶ 27-28.

The ARLECs incorrectly assert that the *MO&O* is called into question by its reliance on *Pine Ridge*.[25] The WCB's public interest analysis was consistent not just with *Pine Ridge*, but with other decisions as well."[26] The AKLECs fail to address the other decisions, discussed above, which support the conclusions reached in the *MO&O*. Second, *Pine Ridge* is not "materially different" from this case. In both cases, the WCB concluded that the applicant had successfully made the "threshold demonstration" that its service offering "fulfils several of the underlying federal policies favoring competition and the provision of affordable telecommunications service to consumers."[27] The only difference in the analysis in *Pine Ridge* was that, having determined that the applicant's designation for the Pine Ridge reservation was in the public interest, the WCB added that a grant of the requested ETC status "will also serve the public interest by removing impediments to increasing subscribership on the Reservation."[28] The WCB's discussion of *additional* reasons supporting a public interest finding does not diminish or qualify its conclusions.

Accordingly, it is clear that the WCB properly applied its own precedent in its analysis of the public interest benefits of designating Cellular South as an ETC throughout its service area in Alabama.

C. The ARLECs Failed to Show that Consumers Would *be* Harmed

The WCB has concluded that designation of qualified wireless carriers as ETCs in rural areas is in the public interest, absent specific demonstrations that consumers will be harmed as a

---

[25] *See* Application at p. 21.

[26] If an order is consistent with Commission precedent, it is unnecessary for all supporting authority to be actually cited in the order. Section 1.115 of the Commission's rules does *not* list failure to cite all relevant precedent among the grounds for overturning an action taken pursuant to delegated authority.

[27] *MO&O* at ¶ 22; *Pine Ridge*, *supra*, 16 FCC Rcd at 18137.

[28] *Id.* at 18137-38.

result."[29] Addressing tlie ARLECs' arguments raised in comments and in several *ex parte* filings, tlic WCB properly concluded that Cellular South's designation throughout its Alabama service arca would not harm rural consumers.

The ARLECs complain about broad policy questions concerning how ETCs are to receive high-cost support, yet they have never made any specific showing in this case that Cellular South's designation might result in reduced infrastructure investment, increased rates, diminished scrvicc quality, or lost network efficiency. In filing comments in opposition to Cellular South's Petition and in multiple *ex parte* presentations, the ARLECs "merely presented data regarding tlic number of loops per study arca, the households per square mile in their wire centers, and the high-cost nature of low-density rural areas."[30] In response, Cellular South demonstrated that the ARLECs inappropriately used Benchmark Cost Proxy Model 3.0, which produces inaccurate results and overstates the necessary investment in network facilities, especially in areas of low line density. In addition, the ARLECs improperly relied on household density, averaged at tlie census block level, as a predictor of network costs in rural areas.

Even accepting the AKLECs' position that sparsely populated areas are expensive to serve, those areas arc precisely where the FCC has attempted to stimulate competition and deployment of more efficient technologies, and where competitive carriers cannot reach many customers without high-cost support. By emphasizing their own difficulties when laced with the prospect of competition, the ARLECs completely ignore the fact that "the purposc of universal service is to benefit tlic customer, not tlic carrier."[31]

[29] *See, e.g., Western Wireless, supra,* 16 FCC Rcd at 56-57; *Western Wireless Recon. Order, supra,* at ¶ 19; *Pine Ridge, supra,* 16 FCC Rcd at 18138-39.

[30] *MO&O* at ¶ 28.

[31] *Alenco Communications, Inc. et al. v. FCC,* 201 F.3d 608, 621 (5th Cir. 2000).

In sum, the WCB properly rejected the ARLECs' speculative arguments that rural consumers would be harmed by Cellular South's designation.

II. ONGOING REVIEW OF USF ISSUES DOES NOT JUSTIFY SUSPENSION OF EXISTING RULES

The AKLECs claim it is "premature" for the WCB to designate any additional ETCs in rural areas until the Commission has resolved those matters raised in its November 8, 2002, *Referral Order*.[32] In effect, tlic AKLECs absurdly ask the Commission to freeze the processing of pending applications, validly filed under existing rules, while the Joint Board considers a possible recommendation to the FCC.

It scarcely bears mention that the law by its very nature is constantly evolving, and that no rule is immune from review. Congress and governmental agencies such as tlie FCC are tasked with changing and improving the law on an ongoing basis. For example, the Commission's biennial review process involves ongoing review and modification of existing rulcs.[33] Just last year, tlie Commission phased out its spectrum cap:[34] The rules for CALEA, E-01 I, number portability and pooling are all in a state of flux. Here, competitive ETCs such as Cellular South will be required to deal with whatever the FCC eventually does. The ARLECs' suggestion that all competitive ETC applications for rural areas he suspended pending the consideration as to whether to change rules may properly be described as anti-competitive. No law or rule can be assumed to "continue unchanged."[35] If the ARLECs believe the regulatory world will have no

[32] Application at p. 11.

[33] *See* 47 U.S.C. § 161.

[34] *See 2000 Biennial Regulatory Review; Spectrum Aggregation Limits For Commercial Mobile Radio Services Report and Order*, WT Docket No. 01-14, Report and Order, FCC 01-328 (rel. Dec. 18, 2001).

[35] *See* Application at p. 13.

certainty or purpose until the Commission adopts rules that are permanent and non-reviewable, they will wait in vain.

Predictably, the ARLECs also suggest that, even though the ongoing review will likely affect both incumbent LECs and competitive ETCs, only their competitors should be blocked from receiving high-cost support. Cellular South asks the Commission *to* see the ARLECs' request *for* what it is: a request to suspend action on "unresolved Commission policy" so as to prevent the ARLECs from facing viable competition for the first time.

The ARLECs also suggest that changes to the Commission's existing policies that reduce support to CETCs may color a CETC's willingness to construct facilities to serve all customers in its service area.[36] While Cellular South appreciates the ARLECs' concern, CETCs will and must adapt to any changes that may result from the Joint Board's ongoing review. Although Congress substantially deregulated mobile wireless services in its 1993 amendments to Section 772 of the Act.[37] new government mandates, such as enhanced wireless 911, CALEA, and number pooling, as well as state efforts to re-regulate, all force carriers such as Cellular South to adjust.

Many competitive ETCs have already been designated in rural areas and are already receiving support. Any policy changes proposed by the Joint Board will take existing CETCs into account. Like all other CETCs, Cellular South will be subject to such policy changes.

---

[36] *See id.* at p. 12.

[37] *See* The Omnibus Budget Reconciliation Act of 1993, § 6002(b), Pub. L. No. 103-66, Title VI, § 6002(b), amending the Communications Act of 1934 and codified at 47 U.S.C. §§ 153(n), 332.

III. THE WCB PROPERLY DECLINED TO CONSIDER THE COLLATERAL ISSUES RAISED BY THE ARLECS

In their comments and *ex parte* filings, the ARLECs and other commenters representing ILEC interests inappropriately raised a number of additional issues, all of which are either broad policy issues or have been adjudicated by a final order in multiple proceedings. The WCB properly declined to consider these issues, concluding that such concerns are "beyond the scope of this Order, which considers whether to designate a particular carrier as an ETC."[38]

Nonetheless, Cellular South is constrained to briefly address the ARLECs' discussion of "explosive" fund growth. The ARLECs, as well as a number of ILEC presentations before this Commission, have completely distorted this debate. The ARLECs' stated concern that designation of additional wireless ETCs will cause the federal universal service fund "to grow to unmanageable proportions"[39] ignores the manner in which support to competitive and incumbent ETC's impacts the fund respectively. As the ARLECs concede, support to competitive ETCs amounts to less than 2% of total high-cost support.[40] From the standpoint of a monopolist, the increase from 0.4% is steep – indeed, the figure was zero until only recently.

Conveniently, the ARLECs fail to mention that it is the ILECs who have been the greatest beneficiaries of the Commission's recent changes to its universal service rules relating to rural areas. Time and again, ILECs have successfully convinced the Commission and Congress to ensure the maximum level of high-cost support to ILECs while seeking to prevent competitors from accessing high-cost support, despite the fact that those competitors pay into the fund. While professing concern about growth in the fund, at least five ARLEC member companies were

---

38 *MO&O* at ¶ 32.

39 Application at p. 14.

40 *See id.*

among those ILECs who sued in federal court to remove the cap on the high-cost fund and the cap on tlie amount of corporate operations cxpcnscs that may be reported.[41] When the Commission increased rural ILEC support by over $1 .26 billion in the *Fourteenth Report ond Order*,[42] rural telephone companies showctl rcniarkably little concern for the sustainability of the fund.

It is disingenuous for the ARLECs to suggest that the Commission's decision lo apply unspent funds from the Schools and Libraries Division ("SLD") to the High Cost program has anything to do with high-cost support to competitive ETCs.[43] During the three quarters in question, over $850 million in unspent funds from the SLD was applied to the High Cost program to stabilize the contrihulion factor.[44] Based upon a review of availahlc Universal Service Administrative Company ("USAC") data, it appears that the amount of high-cost support received by compctitivc ETCs during the same period amounted to less than $50 million. The rest went to ILECs.

Finally. Cellular South notes that the Commission is addressing the increasing demands on the fund in other proceedings of broader applicability, including taking steps to reform the universal service contribution methodology.[45] The reallocation discussed above was taken as an

---

41 *See Alenco*, 201 F.3d at 620-21.

42 *See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11258 (2001) ("*Fourteenth Report and Order*").

43 *See* Application at pp. 13-14.

44 *See* Public Notices announcing no change in USF contribution factor, DA Nos. 02-1409, 02-2221, and 02-3387 (WCB rel. June 13, 2002, Sept. 10, 2002, and Dec. 9, 2002, respectively).

45 *See Report and Order and Second Further Notice of Proposed Rulemaking* in CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, and 98-170 and NSD File No. L-00-72 (rel. Dec. 13, 2002).

interim measure pending the reform of the universal service contribution methodology,[46] not pending an ILEC-sponsored rollback of competitive ETC policy.

While ensuring the future viability of the fund is an important concern, it is no less important that the Commission carry out its statutory responsibility of administering a competitively neutral universal service program that provides rural consumers with comparable choices in telecommunications service to those available in urban areas and places competitors on a level playing held with incumbents.[47] Accordingly, the ARLECs' purported concerns about the size of the fund were properly excluded from the scope of the WCB's determination, and there is no need to entertain them on review.

IV. CONCLUSION

The ARLECs can provide no valid reason to disturb the WCB's grant of ETC status to Cellular South throughout its Alabama service area. By designating a qualified wireless carrier as an ETC, the WCB has ended the ARLECs' monopoly on universal service support, paving the way for Alabama's rural consumers to begin to experience the benefits of facilities-based competition.

Congressional and FCC policy holds that designation of competitive ETCs in all areas is in the public interest, unless specific harm to consumers will result. As shown above, the ARLECs have utterly failed to demonstrate that consumers will be harmed by Cellular South's designation, only providing flawed evidence that improperly focuses on how ILECs might be affected. Also, the ARLECs' proposal to freeze competitive entry by Cellular South and other

---

[46] *See* Public Notice, *Proposed First Quarter 2003 Universal Service Contribution Factor*, DA 02-3387 at p. 2 (WCB rel. Dec. 9, 2002).

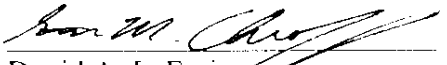
[47] *See* 47 U.S.C. § 254(b)(3). *See also Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision*, FCC 02J-2 (Jt. Bd. rel. Oct. 16, 2002), Statement of Commissioner Kevin J. Martin Approving in Part, Dissenting in Part ("I fail to see how the potential for greater funding levels should prevent us from adopting a support system that meets our statutory obligation").

competitive ETCs pending a review of its rules --- which ultimately may not change the process for designating competitive ETCs and may equally affect incumbents --- is anticompetitive and fundamentally misconceives the agency rulemaking process. The remaining issues raised by the AKLECs and other ILEC commenters were properly found to be outside the scope of this proceeding.

In sum, a reversal of the WCB's grant would not reflect sound public policy, but would favor one class of competitor, and one type of technology. Rural consumers would be deprived of competitive choice, contrary to the purposes of the 1996 Act. For the reasons stated above, Cellular South urges the Commission to deny the AKLECs' Application.

Respectfully submitted,

CELLULAR SOUTH LICENSES, INC.

By: 
David A. LaFuria
Steven M. Chernoff
Its Attorneys

Lukas, Nace, Gutierrez & Sachs, Chtd.
1111 19th Street, N.W., Suite 1200
Washington, DC 20036
(202) 857-3500

January 14, 2003

CERTIFICATE OF SERVICE

I, Janelle T. Wood, a sccrctary in the law office of Lukas, Nace, Cutierrez & Sachs, hereby certify that I have, on this 14th day of January, 2003, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing *Opposition to Application For* ***Review*** filed today to the following:

William Maher, Esq.*
Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th St., S.W.
Room 5C-450
Washington, DC 20554

Jessica Rosenworcel, Esq.*
Legal Advisor to the Chief of the
Wireline Competition Bureau
Federal Communications Commission
445 12th St., S.W.
Room 5C-433
Washington, DC 20554

Katherine Schroder, Esq.*
Chid, Telecommunications Access Policy
Wirelinc Cornpetition Bureau
Federal Communications Cornmission
445 12th Street, S.W.
Room SA-423
Washington, DC 20554

William Scher, Esq.*
Assistant Chief
Telecommunications Access Policy Div.
Wireline Competition Bureau
Federal Communications Commission
445 12th St., S.W.
Room SB-550
Washington, DC 20554

Mark Seifert, Esq.*
Deputy Chief
Telecommunications Access Policy Div.
Wireline Competition Bureau
Federal Communications Commission
445 12th St., S.W.
Room SA-423
Washington, DC 20554

Anita Cheng, Esq.*
Acting Deputy Chief
Telecommunications Access Policy Div.
Wireline Competition Bureau
Federal Communications Commission
445 12th St., S.W.
Room SA-445
Washington, DC 20554

Cara Voth, Esq.*
Telecommunications Access Policy Div.
Wireline Competition Bureau
Federal Communications Commission
445 12th St., S.W.
Room SA-640
Washington, DC 20554

Richard Smith, Esq.*
Telecommunications Access Policy Div.
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 5A-660
Washington, DC 20554

Walter L. Thomas, Jr., Secretary
Alabama Public Service Commission
RSA Building
100 North Union Street
Suite 850
Montgomery, AL 36101

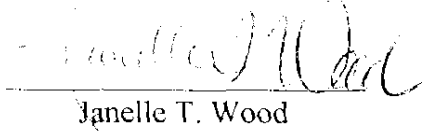
Alabama Rural Local Exchange Carriers
c/o Leah S. Stephens, Esq.
Mark D. Wilkerson, Esq.
Brantley, Wilkerson & Bryan, PC
405 South Hull Street
Montgomery, Alabama 36104

William W. Jordan, Esq.
Vice President - Federal Regulatory
BellSouth Telecom Inc.
1133 21st
Suite 900
Washington, D.C. 20036

John M. Wilson, Esq.
Regional Manager/Legislative Affairs
Verizon Mid-States/Verizon South, Inc
100 N. Union Street
Suite 132
Montgomery, AL 36104

Pine Belt Telephone Company, Inc.
c/o Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W.
Suite 520
Washington, D.C. 20037

Carolyn C. Hill, Esq.
Vice President/Federal Regulatory Affairs
Alltel Corporation
601 Pennsylvania Avenue, N.W.
Suite 720
Washington, D,C. 20003



Janelle T. Wood

* Indicates individuals who received a copy of the foregoing via Hand Delivery.